United Nations S/AC.37/2002/44

Security Council

Distr.: General
1 May 2002
English
Original: Spanish

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 30 April 2002 from the Permanent Mission of Spain to the United Nations addressed to the Committee

The Permanent Mission of Spain to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1267 (1999).

With regard to the note dated 7 March 2002 from the Chairman of the Committee, the Permanent Mission of Spain to the United Nations submits the attached report to the Committee on the measures taken in application of resolution 1390 (2002), adopted by the Security Council on 16 January 2002 (see annex).

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Annex to the note verbale dated 30 April 2002 from the Permanent Mission of Spain to the United Nations addressed to the Committee

Report on measures taken in implementation of Security Council resolution 1390 (2002)

Paragraph 6 of Security Council resolution 1390 (2002) requests all States to report to the Committee the steps they have taken to implement the measures referred to in paragraph 2 of that resolution. This report has been compiled in accordance with the relevant guidelines.

> (a) "Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory."

A. Norms applicable to the freezing of the financial assets of the individuals affected

The freezing of assets is a measure covered under Act No. 40/1979 of 10 December on exchange control, which consists in the possibility of applying restrictions or prohibitions on the movement of capital and related operations.

Specifically, paragraphs 3 and 4 of its article 2 (introduced in 1999) permit the prohibition of movements of capital when so stipulated by a European Community regulation or a resolution of an international organization other than the European Community of which Spain is a member.

Consequently, the European Community regulations covering the persons, companies or entities in Security Council resolution 1390 (2002) were directly and immediately applied in Spain, based on the provisions of the Act.

The obligation of financial entities to apply those principles is ensured through article 10, paragraph 1, of Act No. 40/1979, which stipulates that failure to implement the aforementioned prohibitions shall be considered a very serious offence.

B. Measures adopted to facilitate the awareness of financial entities about the persons, companies and entities included on the various lists

European Community regulations (and annexes containing the lists of persons affected by the freeze) are published in the *Official Journal of the European Communities*.

As a supplementary measure intended to ensure their immediate application, the Chairman of the Commission to Prevent Laundering of Capital and Monetary Crimes has repeatedly sent the excerpts from the *Official Journal* with the lists of persons, companies and entities mentioned to financial bodies and investment services companies. At the offices contacted, the presidents of the associations are

requested to disseminate the regulations and their annexes among the associated bodies.

C. Internal coordination meetings held between administrative units and departments involved in applying the freeze

Because of such factors as the urgency of the situation after 11 September and the transmission to various administrative bodies of a number of lists coming from different international organizations, among others, it seemed advisable to hold various meetings among the bodies affected by the adoption of the measures of freezing assets (the police, the Bank of Spain, Public Prosecutor's Office, the tax authorities, etc.).

The purpose of the meeting of the Standing Committee of the Commission on the Prevention of Laundering of Capital and Monetary Offences held on 26 October 2001 was to clarify the use of the information available, whether internal or issued by international agencies, how and with whom to share the information to make the system as operational as possible and achieve the greatest possible diligence in freezing the assets of terrorists.

Agreement was also reached on the form in which police departments should receive information which could corroborate or rule out the identification of persons or entities, in order to verify that they were the same as those who appeared on the lists, so that the financial entities could inform the Directorate-General of the Treasury and Financial Policy of the subsequent freezing of funds.

Based on these internal agreements, information on freezes supplied by the financial entities was provided to the specialized police units and the Intelligence Unit of the Commission.

D. Results of the measures implemented

In Spain there has been good cooperation between the administration and financial entities. An open channel of communication has been established, making it possible to know at any moment which accounts are blocked. Blocks have been placed on a preventive basis, allowing the competent authorities to conduct the relevant investigations enabling them to determine whether or not the client of the entity is the natural or legal person included on the lists. Therefore, the great majority of accounts which were initially blocked (71) have now been unfrozen after verification that the clients of the entities were not the individuals included on the lists.

As of now, only nine accounts, amounting to just 427.95 euro, remain blocked on a preventive basis while the identity of the account holders is being investigated.

E. Technical cooperation with the authorities of other countries of the European Union called together by the European Commission and third countries which participate actively in the expert committees on financial sanctions, invited by the "Group of experts on financial sanctions"

The purpose of the meetings held was to define the scope of the concept of economic resources, explain the legal problems presented and exchange information on the actions of the various countries. It should be noted that problems remain to which it is difficult to find a practical solution, for instance the freezing of resources

from the sale of gems or monitoring of small businesses that can operate under names different from those included in the lists issued on 23 September by the European Commission and on 30 November 2001 by the United States Treasury Department and its subsequent updates.

F. Measures relating to economic resources belonging to foreign nationals included on the lists

Note should be taken of the Agreement of the Council of Ministers of 30 November 2001, executing Security Council resolution 1267 (1999) and concurrent resolutions in conformity with the principles contained in Security Council resolution 1373 (2001), as well as Regulation 467/2001 of 6 March of the Council of the European Community, suspending the regime of liberalization of investment for certain organizations and terrorist groups.

This Agreement establishes a list of organizations, groups and individuals to which the suspension of the liberalization regime for foreign investment is applied. In turn, the Agreement establishes that the measures mentioned are to be applied to any other individual or entity that can be presumed to be a continuation of a prior one.

In executing the Agreement, all the lists issued by the European Commission in its Regulations (authorized by European Community Council regulation 467/2001) have been inspected, as well as all the names on the lists supplied by some Governments, in particular by the United States Treasury Department, in order to identify possible investments declared in the General Registry of Investments of the Ministry of the Economy.

Although many similarities in certain names have been discovered, there is no proof that terrorists own businesses in their names and are acting within the law in Spain. This does not mean that they are not receiving support from other foreign nationals who could own small businesses operating legally in Spain.

By way of conclusion, it can be noted that, despite the difficulty in defining in specific cases what constitutes financing of terrorism, the measures taken have provided more information and vigilance over the names included on the lists issued and/or transmitted by other Governments and have improved cooperation with law enforcement to prevent the financing of terrorism.

(b) "Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified."

Spanish law includes measures that provide for denial of entry into Spanish territory to individuals connected with the commission of crimes such as those covered under resolution 1390 (2002).

In particular, article 26 of Organic Law No. 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration stipulates:

"Those foreign nationals who have been expelled, as well as those to whom entry has been denied for another reason or by virtue of an international

convention to which Spain is a Party, may not enter Spain, nor obtain a visa for that purpose, while the denial of entry is in effect."

In developing that rule, the Regulation for the enforcement of this Organic Law, adopted by Royal Decree No. 864/2001 of 20 July specifically stipulates in its article 26:

"Foreign nationals shall be prohibited from entering, and access to Spanish territory shall be denied them, even though they meet the requirements of the preceding articles, when (...):

2. Through the diplomatic channel, through Interpol or any other method of international judicial or police cooperation it becomes known that they are sought in relation to criminal cases arising from serious common crimes, by the judicial or police authorities of other countries, as long as the acts for which they are sought constitute a crime in Spain.

3. Through their activities counter to Spanish interests or the interests of humanity, because of their connections with national or international criminal organizations, they have been the subject of an express denial by virtue of a resolution of the Minister of the Interior.

4. Their entry may be prohibited under the international conventions to which Spain is a Party, except when an exception is considered necessary on humanitarian grounds or in the national interest."

On the operational and national level, individuals appearing on the above-mentioned lists are found in the working files of the General Information Office, under the Directorate-General of Police of the Ministry of the Interior, and the Consulates of Spain under the Ministry of Foreign Affairs.

Further, under the European Union framework the implementation of joint measures is being studied to prevent the entry of these individuals into the Schengen Area. To this effect, 38 of the 212 individuals included on the United Nations list have for the moment been included in the Schengen Information System (SIS).

(c) "Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities."

The necessarily brief summary of the regime applicable to external trade in such materiel clearly reflects the difficulty in bypassing the controls imposed by Security Council resolution 1390 (2002).

Weapons and technology (including technical advice, assistance or training) is understood as materials listed in Annex I of Royal Decree 491/1998, approving the regulations on external trade in defence and dual-use materials, which subjects to controls erga omnes exports of the arms and technologies indicated, requiring administrative authorization to remove the merchandise from customs depots and free trade zones and depots.

Furthermore, they must be listed in the Special Registry of Exporters of defence materiel and dual-use items and the request must be accompanied by documentation concerning the use and the end user of the merchandise: a Certificate of Final Destination which should be signed by the authorities of the destination country of the merchandise and an International Import Certificate or a Declaration of Final Destination from the authorities of the receiving country. These documents are required to confirm that the merchandise will not be used in a way different than described in the licence.

The criteria for authorizing or denying permission to export are specified in articles 6 and 9 of the Regulations, and the following should be emphasized: the general interests of national defence and State foreign policy, international commitments entered into by Spain and guidelines agreed within the European Union, in particular the criteria approved at the meetings of the European Council held in Luxembourg in June 1991 and in Lisbon in 1992 concerning the export of conventional weapons. Recently, those criteria have been expanded through the adoption of a code of conduct on arms exports.

Therefore, weapons subject to controls erga omnes are those included in the Report on Defence Materiel, which includes the Munitions List of the Wassenaar Arrangement. Technical advice, assistance or training subject to controls is that included in the technology listed in the related report as published.